IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5198 of 2007()

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CC.903/2001 of J.M.F.C.,KASARAGOD
CRIME NO.458/01 OF THE STATION HOUSE OFFICER, KASARAGOD

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PETITIONER : 2ND ACCUSED

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C.M.MAHIN, S/O.MUHAMMED KUNJI,
CHEKKANANGADU, CHEMANADU VILLAGE.

BY ADV. SMT.MARY BEENA JOSEPH

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR , HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.5198 of 2007**

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**Dated this the 20th day of August, 2007**

**ORDER**

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 292 I.P.C. The co-accused was tried, found not guilty and acquitted. The case against the petitioner has been split up as he was not available for trial. It was renumbered and now stands transferred to the list of Long Pending Cases.

2. According to the petitioner, the petitioner is absolutely innocent. His absence earlier was not wilful. He is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. Therefore it is prayed that directions under Section 438 and/or 482 Cr.P.C may be issued in his favour.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary

equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

**(R.BASANT, JUDGE)**

rtr/-